

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

UNITED STATES OF AMERICA,

v.

JERRY WAYNE WILKERSON,
MICHAEL CHATFIELD,
KASEY NICHOLSON,
BILLY HINDMON, and
JAYSON MONTGOMERY
Defendants.

Docket No. 1:18-CR-11
JUDGE MATTICE
MAGISTRATE JUDGE STEGER

JOINT DEFENDANTS'
MOTION IN LIMINE TO PROHIBIT IRRELEVANT AND UNQUALIFIED TESTIMONY ABOUT THE
MEDICAL EFFICACY OF TOPICAL CREAMS AND WELLNESS PILLS

Comes now the Defendants, Jerry Wayne Wilkerson, Michael Chatfield, Kasey Nicholson, Billy Hindmon, and Jayson Montgomery, by and through undersigned counsel, and respectfully move this Honorable Court for an order prohibiting all parties from offering testimony or other evidence that the topical creams and wellness pills at issue in this case were not effective or did not have a valid, medical purpose pursuant to Federal Rules of Evidence 401, 402, 403, and 702.

In support of his motion, the defendants aver:

1. Evidence which is irrelevant is inadmissible. Fed. R. Evid. 401 and 402.
2. Relevant evidence is still inadmissible "if its probative value is substantially outweighed by a danger of...unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid 403.

3. Opinion evidence that is scientific in nature should only be proffered by an expert witness pursuant to Fed. R. Evid. 702.
4. In this case, numerous patients were prescribed topical creams and wellness pills. These prescriptions were written by health care providers, filled by pharmacists, and paid by health insurers.
5. The effectiveness of the medication has no bearing on whether the defendants committed the crimes alleged in the indictment. Whether these medicines were useless or capable of curing the most terrible diseases does not change the legality of the alleged actions of the defendants.
6. To suggest the medicines had no treatment value would not only be inaccurate, but it would be misleading to the jury, unfairly prejudicial towards the Defendants, individually and collectively, and would confuse the jury as to what conduct is fraud—the fraud alleged in the indictment or whether the medicine was legitimate.
7. Furthermore, the Government has provided no notice of an expert witness and would need such a witness in order for the jury to make a factual determination on whether or not the medicine was effective.

Based on the foregoing and the accompanying memorandum, the Defendants respectfully move this Court for an order prohibiting all parties from offering testimony or evidence that the topical creams and wellness pills did not work, did not have a valid, medical use, or that patients did not have pre-existing conditions, pursuant to Federal Rules of Evidence 401, 402, 403, and 702.

Respectfully submitted this 18th day of June, 2019.

s/ David M. Eldridge

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

This 18th day of June, 2019.

s/ David M. Eldridge
DAVID M. ELDRIDGE